

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

DEEPAK KAPOOR & COMPANY,)
)
and)
)
DKC KNITS LLC)
)
Plaintiffs,)
)
v.)
)
BUFFALO INTERNATIONAL ULC,)
)
and)
)
J.C. PENNEY CORPORATION, INC.)
)
Defendants.)
_____)

5:16-CV-419 (GTS/ATB)

DEFENDANT J. C. PENNEY CORPORATION INC.'S
ANSWER TO COMPLAINT

Defendant, J.C. Penney Corporation, Inc. ("JCPenney"), by its attorneys, for its Answer states as follows:

NATURE OF THE CASE

1. JCPenney admits that Plaintiff purports to allege an action for copyright infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* as set forth in paragraph 1. To the extent paragraph 1 contains any factual allegations, JCPenney denies same.

2. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and, therefore, denies same.

3. JCPenney admits that the Complaint requests damages and an injunction. However, JCPenney denies the allegations contained in paragraph 3 and further denies that Plaintiffs are entitled to any relief.

PARTIES

4. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint and, therefore, denies same.

5. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and, therefore, denies same.

6. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint.

7. Admitted.

JURISDICTION AND VENUE

8. JCPenney admits that this Court has federal question jurisdiction and diversity jurisdiction over the pending dispute as it relates to JCPenney.

9. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint and, therefore, denies same.

10. JCPenney admits the allegations in paragraph 10 of the Complaint.

11. JCPenney denies the allegations in paragraph 11 as they relate to JCPenney. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint as they relate to Buffalo International ULC and, therefore, denies same.

12. JCPenney denies the allegations in paragraph 12 of the Complaint.

DKC AND ITS VALUABLE DESIGNS

13. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint and, therefore, denies same.

14. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint and, therefore, denies same.

15. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and, therefore, denies same.

16. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and, therefore, denies same.

DKC'S PROVISION OF ITS 1934 AND 2098 DESIGNS TO BUFFALO

17. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint and, therefore, denies same.

18. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and, therefore, denies same.

19. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and, therefore, denies same.

Communications Between DKC and Buffalo Regarding the 1934 Design

20. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and, therefore, denies same.

21. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint and, therefore, denies same.

22. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint and, therefore, denies same.

23. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint and, therefore, denies same.

24. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint and, therefore, denies same.

Communications between DKC and Buffalo Regarding the 2098 Design

25. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and, therefore, denies same.

26. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint and, therefore, denies same.

27. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint and, therefore, denies same.

28. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint and, therefore, denies same.

DEFENDANTS' UNLAWFUL ACTS

29. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Complaint and, therefore, denies same.

30. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint and, therefore, denies same.

31. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Complaint and, therefore, denies same.

32. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations as to when DKC may have reviewed any particular website or generated the included screenshots in paragraph 32 of the Complaint and, therefore, denies same. JCPenney denies the remaining allegations of paragraph 32.

33. JCPenney denies the allegations in paragraph 33 as they relate to JCPenney. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Complaints they relate to Buffalo International ULC (“Buffalo”) and, therefore, denies same.

34. JCPenney denies the allegations in paragraph 34 as they relate to JCPenney. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Complaints they relate to Buffalo and, therefore, denies same.

INJURY TO DKC

35. JCPenney denies the allegations in paragraph 35 as they relate to JCPenney. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaints they relate to Buffalo and, therefore, denies same.

36. JCPenney denies the allegations in paragraph 36 as they relate to JCPenney. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaints they relate to Buffalo and, therefore, denies same.

AS AND FOR A FIRST CAUSE OF ACTION

Direct Willful Copyright Infringement (Reproduction) Against Buffalo

37. JCPenney responds to paragraph 37 by repeating and incorporating its specific responses to the allegations set forth in the Complaint.

38. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Complaints they relate to Buffalo and, therefore, denies same.

39. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 of the Complaint as they relate to Buffalo and, therefore, denies same.

40. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Complaint as they relate to Buffalo and, therefore, denies same.

41. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint and, therefore, denies same.

42. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Complaint as they relate to Buffalo and, therefore, denies same.

43. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Complaint as they relate to Buffalo and, therefore, denies same.

AS AND FOR A SECOND CAUSE OF ACTION

Direct Willful Copyright Infringement (Public Distribution)
Against Buffalo and J.C. Penney

44. JCPenney responds to paragraph 44 by repeating and incorporating its specific responses to the allegations set forth in the Complaint.

45. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the and, therefore, denies same.

46. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the and, therefore, denies same.

47. JCPenney denies the allegations in paragraph 47 as they relate to JCPenney.

JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Complaints they relate to Buffaloand, therefore, denies same.

48. JCPenney denies the allegations in paragraph 48 as they relate to JCPenney.

JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Complaints they relate to Buffaloand, therefore, denies same.

49. JCPenney denies the allegations in paragraph 49 as they relate to JCPenney.

JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Complaints they relate to Buffaloand, therefore, denies same.

50. JCPenney denies the allegations in paragraph 50 as they relate to JCPenney.

JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaints they relate to Buffaloand, therefore, denies same.

AS AND FOR A THIRD CAUSE OF ACTION

Direct Willful Copyright Infringement (Public Display)
Against Buffalo and J.C. Penney

51. JCPenney responds to paragraph 51 by repeating and incorporating its specific responses to the allegations set forth in the Complaint.

52. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaintand, therefore, denies same.

53. JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaintand, therefore, denies same.

54. JCPenney denies the allegations in paragraph 54 as they relate to JCPenney.

JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Complaints they relate to Buffaloand, therefore, denies same.

55. JCPenney denies the allegations in paragraph 55 as they relate to JCPenney.

JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 of the Complaints they relate to Buffaloand, therefore, denies same.

56. JCPenney denies the allegations in paragraph 56 as they relate to JCPenney.

JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Complaints they relate to Buffaloand, therefore, denies same.

57. JCPenney denies the allegations in paragraph 57 as they relate to JCPenney.

JCPenney is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Complaints they relate to Buffaloand, therefore, denies same.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure, JCPenney respectfully demands a jury trial of all issues triable to a jury in this action.

PRAYER FOR RELIEF

JCPenney denies that Plaintiffs are entitled to any relief. Accordingly, JCPenney respectfully requests that Plaintiff's Prayer for Relief be denied in its entirety.

AFFIRMATIVE DEFENSES

JCPenney asserts the following affirmative defenses in addition to the denials set forth above. JCPenney reserves the right to amend, modify, or expand these defenses as discovery proceeds.

First Affirmative Defense: Waiver

Upon information and belief, JCPenney Corporation pleads affirmatively that Plaintiffs' claims are barred by the doctrine of waiver.

Second Affirmative Defense: Estoppel

Upon information and belief, JCPenney Corporation pleads affirmatively that Plaintiffs' claims are barred by the doctrine of estoppel.

Third Affirmative Defense: Acquiescence

Upon information and belief, JCPenney Corporation pleads affirmatively that Plaintiffs' claims are barred by the doctrine of acquiescence.

Fourth Affirmative Defense: Unclean Hands

Upon information and belief, JCPenney Corporation pleads affirmatively that Plaintiffs' claims are barred by the doctrine of unclean hands.

Fifth Affirmative Defense: First Sale

Upon information and belief, JCP pleads affirmatively that Plaintiffs' claims are barred by the first sale doctrine.

Sixth Affirmative Defense: Copyright Misuse

Upon information and belief, JCPenney Corporation pleads affirmatively that Plaintiffs' claims are barred by the doctrine of copyright misuse.

Seventh Affirmative Defense: Invalidity

Upon information and belief, JCPenney Corporation pleads affirmatively that Plaintiffs' claims are barred because their copyrights and copyright registrations are invalid.

Eighth Affirmative Defense: Failure to State a Claim

Plaintiffs' have failed to state claims upon which relief may be granted.

Ninth Affirmative Defense: License

Upon information and belief, JCPenney pleads affirmatively that Plaintiffs' claims are barred because Plaintiffs expressly or impliedly licensed the alleged designs to Buffalo to use, reproduce, distribute or sell to others.

Tenth Affirmative Defense: Failure to Mitigate Damages

Upon information and belief, to the extent Plaintiffs suffered any damage, which JCPenney Corporation denies, Plaintiffs failed to take steps necessary to mitigate the damages sustained.

Eleventh Affirmative Defense: Lack of Original Authorship

Upon information and belief, JCPenney Corporation pleads affirmatively that Plaintiffs' claims are barred because the works alleged to have been infringed lack sufficient original authorship to receive copyright protection in the United States.

Twelfth Affirmative Defense: No Statutory Damages

JCPenney pleads affirmatively that the Complaint fails to state facts sufficient to permit recovery of statutory damages against JCPenney, and, therefore, no award should be granted.

Thirteenth Affirmative Defense: No Attorneys' Fees

JCPenney pleads affirmatively that the Complaint fails to state facts sufficient to permit recovery of attorneys' fees against JCPenney; and, therefore, no award should be granted.

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